

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**PARKERSBURG DIVISION**

HERMAN BAILEY,

Petitioner,

v.

CIVIL ACTION NO. 6:05-cv-00249

THOMAS MCBRIDE, Warden,

Respondent.

**MEMORANDUM OPINION AND ORDER**


Pending before the court is the Respondent's Motion to Dismiss Petition for Failure to Exhaust State Remedies [Docket 7]. This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact [Docket 10] and recommended that the court find that Petitioner has exhausted Grounds Two through Seven of his section 2254 petition, but has failed to exhaust Ground One. Because the Petitioner has requested to withdraw the unexhausted ground and to proceed on the grounds that have been exhausted, the Magistrate Judge has also recommended to deny as moot Respondent's Motion to Dismiss for Failure to Exhaust State Remedies [Docket 7]

Neither party has filed objections to the Magistrate Judge's findings and recommendation.

Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge, and **DENIES AS MOOT** Respondent's Motion to Dismiss for Failure to Exhaust State Remedies.

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER: December 6, 2005



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE